Supreme Court, U.S.
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No. 85-1789

In The
Supreme Court of the United States
October Term, 1985

ROBERT JOHN WINICKI and
ANDREW ALEXANDER STRAUSS,

on behalf of themselves and
all others similarly situated,

Petitioners,

vs.

ROBERT A. MALLARD, individually and in his capacity as the Property Appraiser of Duval County, Florida,

on behalf of himself and all other similarly situated;

LYNWOOD ROBERTS, individually and in his capacity as the Tax Collector of Duval County, Florida,

on behalf of himself and all other similarly situated;

RANDY MILLER, individually and in his capacity as the Executive Director of the Department of Revenue of the State of Florida,

Respondents.

REPLY BRIEF TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REPLY ARGUMENT

THE PROSPECTIVE RULING OF THE FLORIDA SUPREME COURT IN OSTERNDORF V. TURNER, 426 So.2d 539 (Fla. 1982) ELIMINATED THE TAXPAYERS' STATE REMEDIES.

The Counties assert in their answer brief that "[t]he failure of the purported taxpayer class to pursue their state court remedies" should bar the Taxpayers from obtaining a federal damage remedy under 42 U.S.C. § 1983. According to the Counties, "[t]here is no question that Florida courts provide plain, adequate and complete remedies for the protection of federal rights in state tax matters." The Counties do not mention that the prospective ruling of the Florida Supreme Court in *Osterndorf v. Turner,* 426 So.2d 539, 545 (Fla. 1982), *eliminated* all state remedies which had been available to the Taxpayers under Florida law.

The *Osterndorf* decision held the Homestead Exemption Statute unconstitutional only on a prospective basis beginning with the *Taxable* year commencing January 1, 1983. *Id.* This meant that the Counties continued to collect 1982 taxes, which were not due until April 1, 1983 (*see* Fla.Stat. § 197.012 (1981)), for months after the date of rendition, December 16, 1982, of *Osterndorf.* Yet, under *Osterndorf,* the Taxpayers had absolutely no state remedy to prohibit continued collection of 1982 taxes which totaled in excess of one hundred million dollars. In addition, the Taxpayers could not obtain a refund of 1980 and 1981 taxes which totaled in excess of two hundred million dollars.

In *Osterndorf,* the Florida Supreme Court made the conscious decision to deny the Taxpayers state remedies which were available under Florida law in order to allow the continued collection and retention of the illegal taxes by the Counties. Only three taxpayers (all attorneys), who had filed lawsuits prior to the rendition of *Osterndorf,* received refunds amounting to a total of less than $5,000 due to an exception in the prospective ruling. This exception was granted by the Florida Supreme Court to the litigant attorneys as a device to avoid review by this Court of the federal issues presented, but not decided, in *Osterndorf.* The remainder of the approximately three hundred thousand Taxpayers were unable to pursue state remedies which had been available to them before Osterndorf.

In conclusion, the Florida Supreme Court in *Osterndorf* eliminated all state remedies available to the Taxpayers. The only reason for the prospective ruling by the Florida Supreme Court was to remove state remedies which the Counties and the Florida Supreme Court knew were available to the Taxpayers and would have been pursued by them. The Counties' and the Florida Supreme Court's fear of the Taxpayers' pursuit of state remedies resulted in their elimination.

Respectfully submitted,

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